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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

STEPHANIE RIDGWAY,)	3:15-cv-00002-HDM-WGC
)	
Plaintiff,)	
)	ORDER
vs.)	
)	
SUN VALLEY GENERAL IMPROVEMENT)	
DISTRICT,)	
)	
Defendant.)	
_____)	

Defendant Sun Valley General Improvement District ("defendant") operates the Sun Valley pool ("the pool"). (Mot. Summ. J. Ex. 1 (Ariztia Aff. ¶ 4)). Defendant, a political subdivision of the State of Nevada, assumed control of the pool from Washoe County in 2010. *Id.* Plaintiff Stephanie Ridgway ("plaintiff"), a citizen of California, visited the pool on June 20, 2014. (See Compl. ¶¶ 1, 4). After going down one of the water slides, plaintiff struck her foot on the bottom of the pool. (Compl. ¶ 5). Plaintiff suffered injuries as a result of the incident and sought medical treatment. (Compl.

¶ 10).

On January 2, 2015, plaintiff filed a complaint (#1) against defendant asserting a single claim for breach of duty to exercise reasonable care. Before the court is defendant's motion for summary judgment (#19). Plaintiff responded (#20) and defendant replied (#23).

Standard

In a diversity case, substantive summary judgment issues are determined by state law. *Bank of Cal. v. Opie*, 663 F.2d 977, 980 (9th Cir. 1981). Summary judgment shall be granted "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). The burden of demonstrating the absence of a genuine issue of material fact lies with the moving party, and for this purpose, the material lodged by the moving party must be viewed in the light most favorable to the nonmoving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970); *Martinez v. City of Los Angeles*, 141 F.3d 1373, 1378 (9th Cir. 1998). A material issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the differing versions of the truth. *Lynn v. Sheet Metal Workers Int'l Ass'n*, 804 F.2d 1472, 1483 (9th Cir. 1986); *S.E.C. v. Seaboard Corp.*, 677 F.2d 1301, 1306 (9th Cir. 1982).

Once the moving party presents evidence that would call for judgment as a matter of law at trial if left uncontroverted, the respondent must show by specific facts the existence of a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). "[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict

1 for that party. If the evidence is merely colorable, or is not
2 significantly probative, summary judgment may be granted." *Id.* at
3 249-50 (citations omitted). "A mere scintilla of evidence will not
4 do, for a jury is permitted to draw only those inferences of which the
5 evidence is reasonably susceptible; it may not resort to speculation."
6 *British Airways Board v. Boeing Co.*, 585 F.2d 946, 952 (9th Cir.
7 1978); see also *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S.
8 579, 596 (1993) ("[I]n the event the trial court concludes that the
9 scintilla of evidence presented supporting a position is insufficient
10 to allow a reasonable juror to conclude that the position more likely
11 than not is true, the court remains free . . . to grant summary
12 judgment."). Moreover, "[i]f the factual context makes the non-moving
13 party's claim of a disputed fact implausible, then that party must
14 come forward with more persuasive evidence than otherwise would be
15 necessary to show there is a genuine issue for trial." *Blue Ridge*
16 *Ins. Co. v. Stanewich*, 142 F.3d 1145, 1149 (9th Cir. 1998) (citing
17 *Cal. Architectural Bldg. Prods., Inc. v. Franciscan Ceramics, Inc.*,
18 818 F.2d 1466, 1468 (9th Cir. 1987)). Conclusory allegations that are
19 unsupported by factual data cannot defeat a motion for summary
20 judgment. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

21 **Analysis**

22 As an initial matter, plaintiff and defendant agree that Nevada
23 law applies to this case. (See Mot. Summ. J.; Pl. Opp'n to Mot. Summ.
24 J.).

25 Under Nevada law, political subdivisions are provided immunity
26 for: (1) failing to inspect, whether or not a duty to inspect exists;
27 or (2) failing to discover a hazard, whether or not an inspection is
28 performed. NEV. REV. STAT. § 41.033(1). As the Nevada Supreme Court

1 explained in *Nardozzi v. Clark County School District*, 108 Nev. 7, 9,
2 823 P.2d 285, 287 (1992), immunity under NRS § 41.033(1) "will not bar
3 actions based upon a public entity's failure to act reasonably when
4 it has express knowledge of a hazard." See also *Chastain v. Clark*
5 *Cty. Sch. Dist.*, 109 Nev. 1172, 1175, 866 P.2d 286, 288 (1993); *Lotter*
6 *v. Clark Cty. Bd. of Comm'rs*, 106 Nev. 366, 793 P.2d 1320 (1990).
7 Plaintiff has set forth specific facts showing a genuine issue for
8 trial as to whether defendant had express knowledge of a hazard prior
9 to plaintiff's injury.

10 The crux of defendant's motion is that there is no evidence that
11 anyone other than plaintiff has ever been significantly injured by
12 striking the bottom of the pool after using the slide. Defendant
13 provided an affidavit from Michael Ariztia, Public Works Director for
14 defendant from August 1, 2007, through June 12, 2015, which states
15 that all incidents involving injuries to patrons at the pool were
16 reported to him. (Mot. Summ. J. Ex. 1 (Ariztia Aff. ¶ 5)). The
17 affidavit states that Mr. Ariztia is not aware of any incidents at the
18 pool where a patron was "injured significantly enough to require any
19 medical attention by virtue of coming into contact with the bottom of
20 the swimming pool after using one of the slides." (*Id.* at ¶ 8).

21 Additionally, Mr. Ariztia's affidavit states that when defendant
22 began operating the pool, Washoe County never advised it "of any
23 particular or unusual problems" with the slides. (*Id.* at ¶ 6). Mr.
24 Ariztia asserts that "the most common incidents involving the slides
25 at the pool involved young children who used the slides and had to be
26 rescued from the water when they could not touch the bottom because
27 the pool was too deep for them or because they were otherwise in
28 distress." (*Id.* at ¶ 7). Defendant claims that plaintiff's incident

1 was unprecedented and, therefore, argues that the absence of prior
2 accidents demonstrates that defendant had no express knowledge that
3 an adult using the water slide could strike the bottom of the pool
4 with sufficient force to cause significant injury. Defendant contends
5 that it is entitled to immunity because there is no admissible
6 evidence showing that it had express knowledge of a hazard.

7 Plaintiff, however, provided depositions from two lifeguards at
8 the Sun Valley pool who testified that, prior to the incident with
9 plaintiff on June 20, 2014, other users of the slide scraped the
10 bottom of the pool. (Pl. Opp'n to Mot. Summ. J. Ex. 5 (Pachnik Dep.
11 11:9-24), Ex. 6 (Ray Dep. 10:24-25, 11:1-25, 12:1-5, 13:10-15)). One
12 of the lifeguards also testified that he hit the bottom of the pool
13 after using the water slide. (Pl. Opp'n to Mot. Summ. J. Ex. 6 (Ray
14 Dep. 12:6-8)).

15 In reply defendant asserts that the testimony from the lifeguards
16 supports its contention that defendant "was not on actual notice of
17 any condition in the pool's waterslide that is relevant to Plaintiff's
18 injury, i.e., a situation where someone significantly injured
19 themselves after using the slide and striking the bottom of the pool."
20 (Reply to Mot. Summ. J. at 6). Defendant highlights the difference
21 between hitting the bottom of the pool and striking the bottom of the
22 pool with significant force to cause any sort of injury. (*Id.* at 9).
23 Thus, Defendant focuses on its lack of express knowledge of the
24 potential consequences from the alleged hazard.

25 The Nevada Supreme Court has found that the issue of whether the
26 governmental entity had express knowledge of the existence of the
27 alleged hazardous condition is distinct from whether the governmental
28 entity acknowledged that it constituted a hazardous condition. See

1 *Chastain v. Clark Cty. Sch. Dist.*, 109 Nev. 1172, 1178, 866 P.2d 286,
2 289 (1993). In *Chastain v. Clark County School District*, the Nevada
3 Supreme Court stated that "Nardozzi does not require that the public
4 entity acknowledge as hazardous a condition of which it has express
5 knowledge. Rather, the entity need only have express knowledge of the
6 existence of the condition."¹ *Id.* Thus, defendant's emphasis on the
7 severity of injuries is misplaced because "whether a particular
8 condition constitutes a hazard is a question of fact for the jury."
9 *Id.* at 1178. Moreover, in *Chastain*, the Nevada Supreme Court defined
10 the alleged hazardous conditions as the "sandbox low in sand and the
11 broken bottles therein," and did not connect it to Chastain's injury,
12 i.e. a child getting pushed into the sandbox and being injured
13 significantly enough to require any medical attention. *Id.* at 1172.
14 For purposes of determining immunity, the issue is whether defendant
15 knew the depth of the pool was a hazard, not whether the depth of the
16 pool would cause significant injuries requiring medical attention.

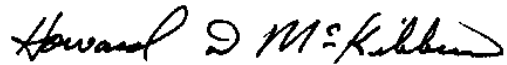
17 In ruling on a motion for summary judgment, the court must
18 construe the evidence and the inferences which flow from the evidence
19 in the light most favorable to the non-moving party, here plaintiff
20 Stephanie Ridgway. See *Guidroz-Brault v. Missouri Pacific R. CO.*, 254
21 F.3d 825, 829 (9th Cir. 2001). The evidence presented in this case
22 can lead to the inference that defendant had express knowledge of the
23 alleged hazard. Thus, plaintiff has raised a genuine issue of
24 material fact that precludes summary judgment on the issue of whether
25 the defendant is entitled to governmental immunity. Therefore,

26
27 ¹ The court finds defendant's efforts to distinguish the facts of this case from *Chastain* and
28 *Nardozzi* unavailing. (Reply to Mot. Summ. J. at 11-12). The statute does not differentiate between
transient/temporary hazardous conditions and fixed/static hazardous conditions. See NEV. REV. STAT.
§ 41.033(1).

1 defendant's motion for summary judgment (#19) is **DENIED**.

2 IT IS SO ORDERED.

3 DATED: This 18th day of November, 2015.

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5 UNITED STATES DISTRICT JUDGE
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